

The Manslaughter Cases.

On Monday last 30th ult. the Rev. W. J. Larkin appeared before Mr. Justice Bickerton, to answer a charge of manslaughter in the second degree. The proceedings were instituted by the Attorney General (ad. interim) in consequence of the verdict given at the inquest on the body of David Pashao, who was killed on 20th ult. by the fall of the school-room at the Roman Catholic College of St. Louis of which Father Larkin is the President. The case had been continued from the previous Thursday and in the meantime it had been intimated to the Rev. gentleman by the attorney conducting the prosecution that if he chose to leave the Kingdom he would be permitted to do so and the proceedings against him would be suspended. He, however, declined to leave with so grave a charge as that of killing a man, hanging over his head.

At the request of a member of the bar, who said that the case had to be defended would occupy more than twenty minutes, what proved to be a very tedious civil suit was taken before Father Larkin's case. Hence it was not till one o'clock that the proceedings commenced, Mr. Bickerton having considerably dismissed the witnesses from attendance until that hour, when he found that the "twenty minutes" case was likely to occupy the whole of the forenoon. Father Larkin, whose counsel were Mr. John Russell and Mr. S. B. Dole, pleaded not guilty. Mr. E. Preston and the Deputy Attorney General, Mr. W. O. Smith, conducted the case for the Crown. The first witness called was

Henry Long. His evidence was to a great extent a repetition of that given by him at the inquest. On being cross examined by Mr. Russell he said that when he returned to the building about 1.30 p. m., David Pashao was on the main side of the screen and was breaking the roof. The part of the roof they were breaking when stopped by Father Larkin was close to where they had found the two women. It had not been necessary to break the roof to get the women out. They began to break the roof because they could not see David anywhere. The second time they began a number of people had arrived, and they started to break the roof here and there in many places. In reply to the Police Justice he said that less than a minute elapsed between the time that he saw deceased on the main side of the screen and the breaking of the iron roof.

Dr. N. B. Emerson then gave evidence as to his examination of the body on its recovery and as to the nature of the injuries which were the cause of death. This did not differ from that given at the inquest.

Mrs. Henry Long repeated the account of the fall of the building and her escape, which she gave at the inquest. In answer to questions put by Mr. Russell and by the Bench, she said that she had been beyond the screen in the morning. The doors in the part of the building which was beyond the screen were boarded up. They could not get out from there except by coming under the screen. After she came back from dinner the deceased was not minka of the screen. He was with Sarah Dawson and Kainuvalu, helping them. The screen was so placed as to cut off one-third of the building.

Sarah Dawson repeated the evidence she gave at the inquest. In reply to questions she said that she saw Father Larkin in the building about fifteen minutes before the accident. Her impression that it was so long was formed from the fact that in the interval Mrs. Long came in then Mr. Long and afterwards Charles Clarke, all separately. David Pashao was with Mrs. Long and Kainuvalu, in the middle of the building, sitting on the heap of ferns. The doors of the room beyond the screen were all boarded up.

Charles Clarke in addition to evidence given at the inquest said he was not there more than 15 minutes before the building fell. Long and he went minka of the screen. David Pashao was there when they were there and he did not see him go back again. They went through the screen at the end and David at the Waikiki end. They had only returned from behind the screen a few seconds when the accident happened. The last place he saw Father Larkin when he came from behind the screen was on the main verandah.

Kainuvalu repeated her evidence as to the fall of the building. To questions she replied, that Father Larkin came in and spoke to her and then went out again; that when she saw the roof give way and the lamp fall David Pashao was sitting with them and she did not see which way he ran.

Kennel in addition to former evidence said that David and the others were nearly in the centre of the building; he and Long and Clarke were nearer to the main door, deceased was nearly in the centre of the house sitting down, breaking off twigs of fern.

Robt. Sterling, Superintendent of Public Works, attributed the accident to the defective principle of construction. In his opinion, as a professional man the fall was caused by inherent weakness in the roof. The witness repeated in detail the evidence he gave before the Coroner.

George Harris repeated his evidence given at the inquest. It was four or five months since he received the order for the iron roof.

The further hearing of the case was adjourned to Wednesday at 9 a. m.

The hearing of the charge against Rev. W. J. Larkin was resumed on Wednesday morning.

James Hayselden in addition to testimony given at the inquest said that he did not think that the iron roof would have been safe even if the omitted bolts had been put in, because a 2 by 6 piece of pine lumber would not fit to hold the iron plate. During cross examination witness spoke of the roof being a "balloon frame" and was called upon for a description of such a frame. His opinion was that in this climate the balloon was better than the mortise and tenon frame because the tenons rot off. By aid of the plan he showed that the roof was so constructed that all shrinking of the timber used, tended to make it sag.

Marshall Parke gave evidence as to the finding of the broken tie rod which he produced.

George Lucas and L. Way repeated the main portions of their evidence as given at the inquest. The latter witness also said that he considered a balloon frame as good as any other except for warehouses where heavy weights were to be stored. The walls were strong, but the timber in the roof was not sufficient to make it strong.

H. D. Broadway repeated his former evidence and described the position in which the body of deceased was found.

De Witt C. Hornby, carpenter, had worked for Chisholm on the building 7 or 8 days. Work was pushed as they wished to be ready for the concert. There was not any awful hurry. He only worked one hour extra time, this was the day before the concert when the stage was built. He saw Father Larkin there daily but he never

gave him any order. Father Larkin gave orders about the mortar and sand. The day the work was finished the roof began to sag. Props were put up from the edge of the verandah to the ground. It was by Mr. Chisholm's orders these were put up. The overtime work was on the stage not on the building.

Professor Popovich, teacher at St. Louis College, remembered Mr. Hayselden being on the premises. He asked him if he wanted to see the school, because many people came for that purpose and was told by him that he was one of the intending contractors. Mr. H. pointed out one of the walls as not being straight. Did not know which he pointed to. He had not paid much attention. He could not see whether the walls were out or not. He did not say anything to Father Larkin about what passed.

Cornelius O'Neil a carpenter who lived at the College, described the breaking of the tie rod on the Wednesday night previous to the accident. Found a flaw in the broken rod. Said to Father Larkin would like him to get architect's opinion in regard to the breaking of the rod and he immediately sent him for Mr. Wall. Mr. Wall told him, when he asked him about it, that there was no danger, he put up a scaffold and the rod was repaired, put it in its place again. He never noticed anything wrong with the roof except that there was always a sag in it but not one that seemed dangerous. A sag might not arise from giving way of the roof, it might be from blundering in the building of it. People could not see the sag from the ground or inside; only from somewhere where one could see on to the roof. He never thought the building unsafe or that he would have given it a wide berth. He could remember he had never told anybody the building was unsafe. [On this point witness was closely questioned by Mr. Preston and by the Bench. Mr. Bickerton stated that witness had told himself and some other gentleman that the building was unsafe and had told Father Larkin so.] If he said so he was so excited at the time he did not remember anything about it. Tried a level on the wall some hours after the roof broke on Wednesday and found it perfectly upright.

Charles James Wall was then examined. Was at the school on the Thursday before the accident. Was told of the broken rod and that it had been repaired. Father Larkin told him he was one of the use of the hall to the foremen for a ball or something of the sort and wanted to be certain that everything was safe. Made a cursory examination. At Father Larkin's suggestion went to find Chisholm as he had worked on the building. They went together at 7 a. m., on Friday to the school, and arranged to put up six pieces by 8 at once, and discussed the best manner of permanently strengthening the building. All round the building upon them was when they were done to make it safe for that day. Noticed that the plaster ceiling in one place was a little sagged. Told Father Larkin it would be better to test that plaster before the room was occupied. From what he saw that morning considered it safe. The circumstances of the intended occupation of the building the proposed struts were necessary. They were in any case necessary in connection with the work of strengthening the roof. The struts had not been put up when he was there last. Cross examined by Mr. Russell. The conversation with Father Larkin was not about presumed defects in the building, but chiefly the intended party and the precautions necessary in regard to it. Has been a lifetime in the profession. It is considered that a balloon frame is as anything stronger than a tenon frame. Judgment has to be used in the introduction of lumber. Considered the pieces 1 by 8 stronger than a solid piece 4 by 8. In his opinion the roof, as designed, with the calculated thickness of timber would have been safe. Was superintending, but there was a rush of work which prevented any one from properly re-seeing the work. The lathing and plastering was going on a work not contemplated in the arrangements as to be done at same time as the carpenters' work. During the progress of the work Father Larkin appeared to have perfect confidence in the contractor and told him he need not put his mind about as to the job, he being then very busy with the Palace and other work. Never gave a certificate to enable Chisholm to get his money; he was acquainted with Father Larkin. Supposed he got his money from him. Did not remember any conversation with Father Larkin the character of which would lead him to consider the contractors' work insufficient. They were occupied entirely devoted for timber. They were not paid. Did not pass the building in any way at all. When the Chisholms complained they could not get the lumber they wanted they seemed to say that Father Larkin wanted only to supply a number of men were working together and he told them they should get what was specified. Was at one time architect for the King's Palace being however only employed to make the detail drawings from the first architect's plans. Father Larkin thought the work was a slight one, refused or objected to carry out anything he suggested as necessary. It was his professional opinion that the ceiling with which the building was put up would tend to weaken it. When a number of men were working together and he was the principal of the roof, and were hurrying, the tendency would be to have the work scamped. There was crowding of workmen in the building at the time the roof was going on. They have found 20 days from Oct. 18th for the work. The plans and specifications, as regards strength of timber, were not carried out in the building. Made objections to the contractor during the progress of the work. On Thursday noticed that there was a slight sagging of the wall. Supposed the plate was 2 inches out of place at the worst place. Did tell Father Larkin that the walls were spread and that there was necessity for repairs. Did not consider it in the danger it turned out to be from the fact that the rod had parted and been put up again before he got there. In the original contract Father Larkin was to supply the material.

The prosecution rested and Mr. Preston asked that on that evidence the defendant should be committed for trial before the Supreme Court.

Mr. Russell said his learned colleague Mr. Dole having been necessarily absent when an important part of the evidence was being given they wished to consult together before arguing that the defendant should not be committed on that evidence. An adjournment to 2 p. m., was granted.

After the adjournment Mr. Russell addressing the Court for the defendant, said that the test many that had been presented might be divided into two groups, the first, that of the witnesses present at the fall of the roof, and at the recovery of the body of the deceased; and the second, and that of witnesses who had been called as experts or as otherwise able to throw light on the causes of the accident. He would not take up the time of the Court with any comment on the first group. He would only regret as his client regretted the circumstances in which they had deposed. The testimony of the other group touched upon the mode of construction of the building, the way in which its fall may be accounted for and the connection of Father Larkin with the same. The main point underlying this point of *science*, these were O'Neil and Hall. [The learned counsel then read the testimony of these witnesses, and quoted from Russell on Chisholm, p. 652; the case of Rex vs. Allen.] In a criminal case, every man is supposed to be his own actions and personal misconduct, and for these only. The testimony failed to establish any act of personal misconduct or personal neglect on Father Larkin's part. Neither was he had been constantly in it, in pursuance of his professional duties. Section 290 of the Civil Code, imposed duties as to any building dangerous to life on the Board of Health. A question

might from this be raised, whether the incumbent of the position of pastor did not excuse the defendant. It could be reasonably said that Father Larkin would not build a house to fall upon himself. He took all the precautions customary in a civilized community. He maintained that as society is constituted, if a gentleman employed an architect, one known to be in repute by the character of his other engagements, in this instance the architect for the palace, he would throw off all the responsibility and would reasonably feel that every precaution had been taken. Unless it could be shown that Father Larkin subsequently received a warning, there was no case against him. His own acts were those of a man conscious of the building being safe. He was in it during the fifteen minutes before it fell. The view of the absence of any testimony fixing a *scienter*—in view of the straight forwardness of his conduct throughout—and in view of the sacred office he held, Father Larkin, was entitled to immediate dismissal of the case.

Mr. Preston, addressing the Bench in reply, said it was the first time in his life that he had appeared to prosecute any one of the defendant's cloth, and it was painful to him to see the defendant on the prosecution did not impute any malicious conduct to Father Larkin, but they maintained that it was through his culpable omission and neglect that David Pashao lost his life. The law was tender of the life of every man, and it was immaterial to his case that there was no question of intent—a man might be guilty without any purpose to become so, a mere failure to perform a duty may make a man guilty of manslaughter. How many cases were there on record where verdicts of manslaughter had been given against engine drivers, when their careless conduct had resulted in loss of life? Of each of them it might also be said, "he did not think there was any danger; he was sure he had not risked his own life. Sorry as he was to present it before the Court, he maintained that the testimony which had been produced was sufficient to lead the Court to say that this defendant had the means of acquiring the knowledge that the building was unsafe, he was as much guilty of manslaughter as if he had been expressly warned of the danger. He might have said, "I was not acquainted with him, but that did not exonerate the defendant. When Wall had told him that the building was not safe until it was his duty to have warned all people who went to the building after 7 o'clock on the Friday morning, that there was the risk of an accident, and that they should be careful.

Mr. Russell. "There is nothing in the testimony to show that he was told the building was unsafe."

The Bench. "Wall referred him to the unsafe state of the plaster."

Mr. Preston. Taking all the circumstances together: taking the evidence of Hayselden and that of Charles Wall, told him he was one of the building was not plumb, this was enough to warn the defendant and to warrant his commitment. Mr. Dole, with the leave of the Bench, referred to one point that had been omitted in his learned colleague's address. He said that on Friday morning, that there was the risk of an accident, and that they should be careful.

Judge Bickerton said that he had allowed the testimony to run through his mind, not only as given in that Court, but also as given in the previous enquiry. The first point he had decided in his own mind was that Father Larkin had authority and control over that building. Now, it was very evident that that building had been in a dangerous condition since the time that it was finished. By the evidence of Hornby it appeared that it was necessary to put up braces the very day it was finished.

Father Larkin here obtained leave to make a statement as follows:—"One of the things I told the Court was that the place was unsafe. On his oath he could say that, and Mr. Wall and others would swear the same. To show how unconscious he was of any danger, he referred to the fact that he allowed the King's Palace to be put up in the same manner as the building in question. The sound of so many musical instruments would have revealed it if there were cause to suspect insecurity. From purely philanthropic motives, and because he wished to do a good deed, he had sought leave from the Bishop for the firemen to have the use of the hall."

Judge Bickerton continued: The omission to do what a man of intelligence might be expected to do, because in such a case the defendant neglect. A man was supposed to use his common sense in what he did. When iron rods broke in a building, were repaired, and then broke again, there was warning of danger. The defendant, however, neglected to do so. He should, he thought, have proved enough to cause a man to prohibit any one from entering the building.

Father Larkin again entreated to be heard. The same question as to setting proper to the building had been deemed necessary on a previous occasion, because a large crowd was expected, so there was nothing to awaken suspicion in the fact that they were recommended on the second occasion.

Judge Bickerton resumed. He wished to give defendant the benefit of every doubt, but he had a duty to perform. He felt satisfied in his own mind that it was probable that a jury would find the defendant guilty. For several years I was in a lower degree, and therefore he now committed him for trial at the July session of the Supreme Court.

Bail was fixed at \$2,000.

Charles Wall was then arraigned on a like charge, and having waived examination, was committed for trial. Bail as in the former case. It being understood that suitable bail would be tendered for Father Larkin on the following day; he and Mr. Wall were allowed to return to their homes for the night. On Thursday the requisite bail in Father Larkin's case having been arranged, Mr. Wall was released on his own recognizance.

Every American reader has seen some mention of Mrs. Victoria Clavin Woodhull. She became identified to our mind, and no doubt to that of many others, with the discussion and advocacy of free love; and we shared regrets with many that a lady of such superior abilities should be identified with an unworthy and mischievous cause. Recently we received copies of a very handsome print on superior paper, and entitled Woodhull and Clavin's Journal, published in London, England, and among much interesting matter, we find the following vindication of Mrs. Woodhull, which we take great pleasure in placing in our columns. We are glad of a chance to defend the good name of a woman.

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find its way into the columns of my journal calculated to lower its tone or taint its character. But it was so. Articles favoring Free-Love appeared without my knowledge or sanction, which startled the readers of my hitherto spotless print. But the evil done did not rest here. I became incensed as though I was morally responsible for utterances and doctrines which I loathed and abhor from the depths of my inmost being. I now openly avow, with all the earnestness of my life did I favor Free Love even tacitly. With the feelings that should actuate every sanctified wife and mother of a family, I regarded it with loathing when once I got a slight idea of its character and the deep infamy to which it led. And such is my state of feeling at the present time. I only wish that this honest, unreserved declaration, which, through your courtesy I am enabled to make, would exonerate me from any degree of responsibility in the matter, silence serpent tongues, and clear my reputation from the slur which ignorant, unthoughtful, or vindictive persons have cast upon it, reckless of the result."

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